

NON-DISCLOSURE AGREEMENT

This **NON-DISCLOSURE AGREEMENT** (this “**Agreement**”) by and between the SACRAMENTO COUNTY EMPLOYEES’ RETIREMENT SYSTEM (the “**Representative**”) and _____. (“**Disclosing Party**”), is entered into and is effective as of _____, 2020 (the “**Effective Date**”).

WHEREAS, the Representative, in connection with its evaluation of the Disclosing Party’s business and a possible transaction (the “**Potential Transaction**”), have requested certain confidential and/or proprietary information from the Disclosing Party.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, intending to be legally bound, the Representative and the Disclosing Party hereby agree as follows:

1. Definition of Confidential Information.

A. For the purposes of this Agreement, “**Confidential Information**” means any information disclosed, orally or in writing (whatever the form or storage medium) by the Disclosing Party or any of their affiliates, accountants, attorneys, representatives or other agents to, or gathered for inspection by, the Representative or any of their affiliates, accountants, attorneys, representative or other agents (regardless of whether such information or materials is specifically marked as “confidential”), including but not limited to financial statements and any information regarding operations, opportunities, trade secrets, any information relating to product plans, designs, ideas, concepts, costs, prices, finances, personnel, marketing and promotion plans of products or services, financial information and business practices or policies, lists of investors and potential investors, and customer and potential customer information, research, development or know-how and any other technical or business information of the Disclosing Party or the terms or existence of this Agreement or that discussions are taking place with respect to a Potential Transaction.

B. Confidential Information shall not include information that (a) is now or subsequently becomes generally available to the public through no fault or breach on the part of the Representative; (b) the Representative can demonstrate by written evidence to have had lawfully in its possession without an obligation of confidentiality prior to disclosure hereunder and not otherwise in breach of this Agreement; or (c) the Representative lawfully obtained from a third party who has the right to transfer or disclose it and who provides such information without any obligation to maintain the confidentiality thereof.

2. Non-Disclosure and Non-Use of Confidential Information.

A. The Confidential Information is provided for the sole purpose, and Representative agrees to use such information for the sole purpose of the evaluation of the Potential Transaction (the “**Business Purpose**”). Representative shall not copy, reproduce, disclose, publish or disseminate any Confidential Information to anyone other than their trustees, employees and/or legal and financial advisors (under a duty of confidentiality no less restrictive than the terms hereof whether by pre-existing agreement or relationship) who need to know for the Business Purpose, and Representative shall use at least the same degree of care used to protect the unauthorized use, disclosure, publications or dissemination of their own Confidential Information, but in any case no less than a reasonable degree of care. Representative hereby agrees and acknowledges that Representative will be responsible for a breach of this agreement by the Representative and their trustees, employees and/or legal and financial advisors.

B. Representative accepts the Confidential Information solely for the Business Purpose and in connection with the discussions hereunder. Other than for the Business Purpose, Representative shall not use Confidential Information for its own or any third party’s benefit. Representative recognizes and acknowledges the competitive value of the Confidential Information and the damage that could result to the Disclosing Party if the Confidential Information were used or disclosed except as authorized by this Agreement.

C. If Representative receives notice that they may be required or ordered by any judicial, governmental, or other judicial or regulatory entity to disclose any Confidential Information, Representative shall (a) give the Disclosing Party sufficient prior written notice in order to contest such requirement or order and, (b) at the Disclosing Party’s sole expense, cooperate with the Disclosing Party in seeking a protective order or other remedy to limit the disclosure of such Confidential Information to the extent required under this Agreement.

D. If this Agreement or any of its terms or any Confidential Information must be disclosed under any law, order, rule or regulation, and in particular the California Public Records Act (Cal. Gov. Code Section 6250 et. Seq.) Representative shall (a) first give written notice of the intended disclosure to the Disclosing Party, within a reasonable time prior to the time when disclosure is to be made, (b) redact mutually agreed upon portions of this Agreement and any other Confidential Information to the fullest extent permitted under any applicable laws, rules and regulations, and (c) submit a request, to be mutually agreed upon by the parties, at the Disclosing Party’s sole expense, that such portions and other provisions of this Agreement and/or any other Confidential Information receive confidential treatment under the laws, rules and regulations of the body or tribunal to which disclosure is being made or otherwise be held in the strictest confidence to the fullest extent permitted under the laws, rules or regulations of any other applicable governing body.

3. No Warranty. ALL CONFIDENTIAL INFORMATION IS PROVIDED “AS IS,” AND EACH PARTY HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES REGARDING ITS ACCURACY, COMPLETENESS, PERFORMANCE OR NON-INFRINGEMENT OF

THIRD PARTY RIGHTS OR ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4. No Obligation to Complete Transactions. Nothing herein shall be deemed to impose any obligation on either party to proceed with any transaction discussed in connection with the Business Purpose, and each party reserves the right to terminate discussions regarding the Business Purpose at any time. Nothing herein shall be construed to impose any obligation on the Disclosing Parties to disclose any Confidential Information.

5. No License. Representative acknowledges and agrees that nothing contained in this Agreement will be construed as granting any rights, by license or otherwise, to Representative to any Confidential Information or to any of the Disclosing Party's copyrights, trademarks, service marks, patent rights, trade secrets, or other proprietary rights, except as expressly set forth in this Agreement.

6. No Unauthorized Contact or Solicitation. During the course of discussions concerning the Business Purpose, all inquiries and other communications shall be made by Representative and its trustees, employees, and legal and financial advisors directly to employees or representative of the Disclosing Party specified by the Disclosing Party. Accordingly, Representative agrees not to directly or indirectly contact or communicate with any employee of the Disclosing Party concerning the Business Purpose, or to seek any information in connection therewith from such person, without the express written consent of the Disclosing Party. See attached list applicable persons identified by Disclosing Party. Without the Disclosing Party's prior written consent, Representative will not during the term of this Agreement and for a period of two years from the termination date hereof directly or indirectly solicit (i) for employment any person who is employed (or had been employed at any time during the preceding 24 month period) by the Disclosing Party (or whose activities are dedicated to the Disclosing Party) in an executive or management level position or who is otherwise considered by the Disclosing Parties to be a key employee or (ii) for any business purpose (including, without limitation, providing vendor protection services, acting as an investment or financial advisor for or otherwise managing any assets for) any person who is a client (or had been a client at any time during the preceding 24 month period) of the Disclosing Party.

7. Equitable Relief. Subject to Paragraph 2.E., Representative acknowledges that all of the Confidential Information is the exclusive property of the Disclosing Party (or their licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury, the monetary effect of which would be difficult to ascertain. Accordingly, Representative agrees that the Disclosing Party shall have the right to seek immediate injunctive relief against any breach of this Agreement, in addition to any and all other rights and remedies available at law or in equity for such a breach except as otherwise expressly provided herein.

8. General. This Agreement constitutes the entire agreement with respect to the Confidential Information disclosed hereunder and supersedes all prior or contemporaneous oral, or written agreements concerning such Confidential Information. This Agreement may not be amended except by the written agreement signed by authorized representatives of both parties. If any term

of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable term shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the parties as set forth in this Agreement. The Disclosing Party may assign this Agreement, and any benefits of the Confidential Information, to any affiliate thereof. Representative shall not assign this Agreement nor transfer any benefits of Confidential Information, directly or indirectly (through acquisition, merger or otherwise), and any attempt to do so without the prior written consent of the Disclosing Parties shall be null and void. The relationship of the parties is that of independent contractors, and not of agency, partners, joint ventures or the like. This Agreement shall be binding on the parties and their respective successors, assigns, employees, agents, officers, directors and shareholders. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which shall constitute the same agreement.

9. Authority. By signing below, the undersigned representatives of the parties warrant and represent that they have full authority to execute this Agreement on their respective party's behalf and to bind their respective party to the terms hereof.

10. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California without regard to any conflicts of law principles. Any disagreement or action regarding this agreement shall be subject to a court of competent jurisdiction in the State of California, County of Sacramento.

IN WITNESS WHEREOF, the parties have executed this Non-Disclosure Agreement as of the date first above written.

REPRESENTATIVE:
SACRAMENTO COUNTY EMPLOYEES' RETIREMENT SYSTEM

By: _____

Name: _____

Title: _____

DISCLOSING PARTY:

By: _____

Name: _____

Title: _____
